



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Russek & Burkhard GmbH, Gebäudereinigung

File: B-244692.2

Date: August 27, 1991

Michael J. Murphy, Esq., von Maur, Matthews & Partners, for the protester.
Herbert F. Kelley, Jr., Esq., Department of the Army, for the agency.
Robert A. Spiegel, Esq., Office of General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging suspension is dismissed where suspension was based on evidence of a false claim by protester's general manager, and agency complied with applicable procedural requirements; agency did not suspend protester arbitrarily to avoid awarding it contracts it otherwise was entitled to receive.

DECISION

Russek & Burkhard GmbH, Gebäudereinigung (RBG) protests the award of any contract to any other firm under invitation for bids (IFB) No. DAJA76-91-B-0034, issued by the Department of the Army. RBG alleges that it was the low bidder under the IFB, and that the Army has denied the firm the award because the firm has been suspended from contracting with any component of the Department of Defense. RBG maintains that the suspension was improper.

We dismiss the protest.

Mr. Ulrich Russek is the general manager of both the protester, RBG, as well as an affiliate, Russek & Burkhard, Bewachungsgesellschaft, GmbH (RBB). The suspension was based on evidence that Mr. Russek submitted a false claim to the United States in connection with a contract which was held by RBB. This evidence consisted of statements made to the German police, who currently are investigating the charges. RBG challenges the suspension on the basis that the suspension action was taken after bid opening solely to prevent award of the contract to the protester which believes itself to be the low bidder on this solicitation.

052300/144745

Our Office will consider protests of allegedly improper suspensions and debarments occurring during the pendency of an award decision to ensure that the contracting agency is not acting arbitrarily in order to avoid making award to a firm otherwise entitled to the award, and to assure that minimal due process standards have been met. Darby Dev. Co., Inc.; James J. Kerr, B-234944.2; B-234944.3, Nov. 9, 1989, 89-2 CPD ¶ 452.

The agency has met the above standard in this case. The protester does not dispute any of the facts on which the Army's suspension was based. Under Federal Acquisition Regulation (FAR) § 9.407-2(a), a contractor may be suspended if, upon adequate evidence, it is suspected of "[c]ommission of fraud or a criminal offense in connection with . . . performing a public contract or subcontract"; and under FAR § 9.407-1(c), the "suspending official may extend the decision to include any affiliates of the contractor," provided that they are named, given notice, and given an opportunity to respond. The suspensions of RBB and RBG were based on appropriate evidence; they were not imposed arbitrarily to deprive the protester of the contract. It also appears that the Army complied with procedural requirements, including the requirement that the protester be promptly notified of the suspension, as well as the cause and the effect of the suspension. FAR §§ 9.407-1(c) and 9.407-3(c).

We conclude that there is no basis for finding that the suspension was an improper attempt to deprive RBG of the award. The question of whether the facts relied upon by the Army actually support the suspension of the protester and other future actions is for consideration, not by our Office, but by the agency in the course of its investigation of the matter.

The protest is dismissed.



John Brosnan
Assistant General Counsel